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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/680,867	10/06/2003	Tetsuya Fukaya	KGMEP015	4382
22434 7590 01/29/2007 BEYER WEAVER LLP P.O. BOX 70250 OAKLAND, CA 94612-0250			EXAMINER TRAN LIEN, THUY	
			ART UNIT 1761	PAPER NUMBER
SHORTENED STATUTORY PERIOD OF RESPONSE		MAIL DATE	DELIVERY MODE	
3 MONTHS		01/29/2007	PAPER	

Please find below and/or attached an Office communication concerning this application or proceeding.

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

Office Action Summary

Application No.

10/680,867

Applicant(s)

FUKAYA ET AL.

Examiner

Lien T. Tran

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 06 October 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-26 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-26 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☒ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

Acknowledgment is made of applicant's claim for foreign priority based on an application filed in Japan on Oct. 9, 2002. It is noted, however, that applicant has not filed a certified copy of the foreign application as required by 35 U.S.C. 119(b).

Claims 1-26 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the enablement requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to enable one skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention.

Applicant claims a method of producing sterilized packed pasta which includes the step of repeatedly increasing pressure and releasing pressure such that the water is evaporated. The increasing and releasing are repeated at a rate of 1-4 cycles per minute. However, the specification does not teach how many cycles are performed. The condition is that the water is evaporated; however, the specification does not teach how much water is evaporated. Are the cycles repeated till all the water that is added evaporated or what?; this parameter is not taught in the specification. One skilled in the art would not know how to carry out the claimed method after reading the disclosure because there is no teaching of how many cycles to carry out and the level of evaporation. Thus, applicant has not set forth an enabling disclosure.

Claim 1 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

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In the claim 1, the phrase " repeatedly increasing pressure" is unclear because it is not clear what it encompassed. Is the pressure being increased continuously or what?

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

Claims 1-26 are rejected under 35 U.S.C. 103(a) as being unpatentable over Tsen et al in view of Meyer.

Tsen et al disclose a process for the preparation of canned, retorted pastas. The process comprises the steps of placing the pasta in a container along with water, sealing the container, retorting the container at a temperature of at least about 110 degree C and pressures of at least 10 psi for a period of at least 10 minutes.

Tsen et al do not disclose the Fo value, sealing after treat, increasing and releasing pressure cycles, the temperature and pressure differential, preliminarily sterilizing the surface of the pasta, adjusting the pH to 2.5-4.2 and steaming the container after sealing.

Meyer teaches a method for sterilizing food using repeated cycles of increasing and releasing the pressure (see col. 2 line 45 through col. 3 line 22)

The F_0 value can vary depending on the extent and degree of sterilization or pasteurization. In absence of showing of criticality or unexpected result, the F_0 value a result-effective variable which can readily be determined by one skilled in the art to obtain the most optimum sterilization. In the Tsen et al process, it is obvious the pressure is released after retorting. As to the repeated increasing and releasing cycles, the concept of using repeated cycles of pressurization is known in the art as shown by Meyer. It would have been obvious to one skilled in the art to use repeated cycles of treatment depending on the degree of sterilization wanted. The extent of sterilization can vary depending on the type of food and the microbial activity targeted. For example, some microorganism can survive high temperature and high pressure for a period of time; in such instance, it is necessary to repeat the treatment cycle to ensure complete destruction of the microbial activity. The use of repeated cycles, number of cycles, the pressure and temperature are all result-effective variable which can readily be determined by one skilled in the art through routine experimentation so that the most optimum result will be obtained. It would have been obvious to preliminarily sterilize the surface of the pasta and to steam after sealing to further enhance the shelf stability of the product. It would have been an obvious matter of choice to seal after or before retorting. The concept of using low pH to help in reducing sterilization or pasteurization treatment is well known in the art; it would have been obvious to one skilled in the art to use low pH water so that the sterilizing process can be shorten or less severe condition

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is used. It would have been within the skill of one in the art to determine the proper ratio of pasta and water.

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Yang et al. disclose a process for making shelf-stable rice product.

Howard et al disclose acid stabilized pasta.

Raffensperger discloses a process for preparing shelf stable cooked pasta.

Oh discloses shelf stable moist pasta.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Lien T. Tran whose telephone number is 571-272-1408.

The examiner can normally be reached on Monday, Wed-Thursday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Cano Milton can be reached on 571-272-1398. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

January 24, 2007

Lien Tran
LIEN TRAN
PRIMARY EXAMINER
Group 1700